

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

Number: **202120003**

Release Date: 5/21/2021

Index Number: 2041.00-00, 2041.04-00,
2041.05-00, 2601.00-00,
2601.03-05

Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
CC:PSI:B4
PLR-110901-20

Date:
October 22, 2020

Legend

Grantor =
Trust =
Son =
C1 =
C2 =
C3 =
Individual 1 =
Individual 2 =
Court =
u =
w =
x =
y =
Date =
Year =

Dear :

This letter responds to your authorized representative's letter dated April 24, 2020, and subsequent correspondence, requesting rulings on the federal estate and generation-skipping transfer (GST) tax consequences of the proposed exercise of Son's testamentary power of appointment over the property in Trust.

Facts:

On Date, a date after October 21, 1942, and before September 25, 1985, Grantor established Trust, an irrevocable trust.

Section I, Paragraph (a) of Trust provides that the trustee shall use so much of the net income as the trustee sees fit for the education, maintenance and support of Son and his children and lineal descendants.

Section 1, Paragraph (b) provides that after Son attains age u, the trustee shall pay to Son at least annually one-half of the net income and may at any time after Son attains age w terminate Trust and distribute the assets of Trust to Son.

Section I, Paragraph (c) provides that Son shall have upon his death a special power of appointment exercisable by the terms of his will to appoint the property of Trust to and among such person or persons and/or charitable organizations as he shall see fit; provided, however, such power of appointment does not include a power exercisable in favor of Son, his estate, his creditors, or the creditors of his estate.

Section I, Paragraph (d) provides that, in default of the exercise of Son's power of appointment, the Trust property shall be held in Trust for the use and benefit of Son's children and lineal descendants until the youngest reaches age y.

Section I, Paragraph (f) provides that if the trustee determines that the net income is insufficient for the maintenance, education and support of any of the beneficiaries, or in the event of any unusual expenses caused by illness, accident, or other financial emergencies, the trustee may use so much of the corpus of Trustee as the trustee sees fit to make up such deficiency. In addition, the trustee may, in its sole discretion, use as much of the income and/or corpus of Trust as the trustee see fit to purchase a home for Son or to invest in a business enterprise for Son.

Section I, Paragraph (g) provides that Trust shall terminate not later than twenty-one (21 years) from and after the death of the survivor of Grantor, Grantor's wife and Son, and upon such termination such assets and properties shall be distributed to the income beneficiaries of Trust, or any trusts created under Trust, in proportion to their income interests.

Section II provides that in the event of the trustee's resignation, failure, refusal, or inability to act, any Court shall appoint as sole successor trustee any national bank having trust powers and having unimpaired capital and surplus of not less than \$x. Section II further provides that when Son reaches the age y, he may at any time request and require the removal of the then acting trustee, but in such event Court shall appoint as successor trustee any national bank having trust powers and having unimpaired capital and surplus of not less than \$x.

Currently, Trust is administered by an independent corporate trustee. Son represents that, from the viewpoint of voting control, Son does not own significant holdings of stock in any national bank; Son is not an executive of any national bank; and Son will not during his remaining lifetime purchase significant (from the viewpoint of

voting control) holdings of stock in any national bank or become an executive of any national bank.

Grantor and Grantor's wife are deceased. Son is over the age of u and has three living children, C1, C2, and C3. Under the terms of his will, Son proposes to exercise his testamentary power of appointment in Trust in favor of his children, in equal shares. If any child of Son fails to survive Son, such child's share shall pass to such deceased child's then living descendants *per stirpes*. Each share allocated for the benefit of C1, C2, and C3 shall be held in a separate trust governed by the provisions of Article 2-3, 2-4, or 2-5, respectively, of Son's will. Any share allocated for the benefit of a grandchild or more remote descendant of Son shall be held in a separate trust governed by the provisions of Article 2-6.

Article 2-3.2, 2-4.2, and 2-5.1 provide for discretionary distributions of the income and/or principal to the respective trust beneficiary and his or her descendants during the term of his or her trust. Similarly, Article 2-6.1 provides for discretionary distributions of the income and principal to a grandchild or more remote descendant of Son for whom a trust is established. In addition, Articles 2-3.4 and 2-4.4 grant C1 and C2, respectively, a lifetime special power of appointment to the child or grandchild in his or her trust exercisable in favor of one or more charitable organizations.

Articles 2-3.7, 2-4.7, 2-5.2, and 2-6.2, collectively, provide that the trusts governed by those articles of Son's will shall terminate upon the first to occur of (i) the death of the trust beneficiary, or (ii) the Year Trust Perpetuities Date.

Article 2-3.8, 2-4.8, 2-5.3, and 2-6.3, each provide that upon termination of a trust governed by that article, the trust estate shall be distributed to the trust beneficiary, if he or she is then living. With respect to the trust held for the benefit of C1, Article 2-3.8 provides further that if the trust beneficiary is not living on the termination date of his trust, then the trust estate shall be paid to or held for the benefit of any one or more of Individual 1 and the trust beneficiary's descendants (other than the trust beneficiary, the trust beneficiary's creditors, the trust beneficiary's estate, and the creditors of the trust beneficiary's estate) who may be living from time to time and/or any one or more charitable organization as the trust beneficiary may appoint. Article 2-4.8 provides substantially identical language for the trust held for C2, except that Individual 2 is substituted for Individual 1. Similarly, Articles 2-5.3 and 2-6.3 provide substantially identical language for the trust held for C3 and any trust held for a grandchild or more remote descendant of Son, except the trust beneficiary's power of appointment is limited to Son's descendants and charitable organizations.

Article 4-1.13 provides that the term "Year Trust Perpetuities Date" shall mean the day preceding the expiration of twenty-one (21) years after the date of death of the last survivor of all members of the Year Trust Designated Class. For this purpose, the

term “Year Trust Designated Class” shall mean Son and certain named individuals, all of whom were born (or were in gestation) prior to Date.

Article 4-3.5(b) provides that no interest of a beneficiary of a trust held under Article 2-3, 2-4, 2-5, or 2-6 or pursuant to the exercise of a special power of appointment or any fiduciary power granted thereunder may be held in trust and undistributed to such beneficiary beyond the day preceding the expiration of twenty-one (21) years after the date of death of the last to die of the Year Trust Designated Class (as defined in Article 4-1.13). If any trust created by such terms of this will or pursuant to the exercise of a power of appointment granted under any of such terms of this will is still being administered at that date, such trust will terminate at that date and the principal and accrued but undistributed income of such trust shall pass free of trust in accordance with whatever provisions govern distribution on termination or, if the trust has no such provision that is applicable, to its then income beneficiary.

Son’s proposed exercise of his power of appointment over the property in Trust establishes successor trusts governed by Articles 2-3, 2-4, 2-5, and 2-6 of his will. In addition, Son’s proposed exercise of his power of appointment creates powers of appointment in the successor trusts over the property in Trust. Articles 2-3.8, 2-4.8, 2-5.3, and 2-6.3 grant the trust beneficiary of a successor trust a testamentary power to appoint his or her trust estate provided that, in no event, may the trust beneficiary of a successor trust appoint his or her trust estate in favor of his estate, his creditors, or the creditors of his estate. Under Article 4-3.5 of Son’s will, by reference to Articles 4.1.13, no trust held under Articles 2-3, 2-4, 2-5, or 2-6 or pursuant to the exercise of a special power of appointment or any fiduciary power granted thereunder may be held in trust undistributed beyond the day preceding the expiration of twenty-one (21) years after the death of a class of persons all of whom were lives in being, or in gestation, at the date of the creation of Trust. These include the Year Trust Designated Class, all of whom were alive (or in gestation) on Date.

You represent that there have been no additions, constructive or actual, to Trust since September 25, 1985.

RULINGS REQUESTED

You have requested the following rulings:

1. The property in Trust will not be included in Son’s gross estate for federal estate tax purposes, either by the express terms of Trust or by the exercise of Son’s testamentary power of appointment over the property of Trust.
2. Son’s proposed exercise of his testamentary power of appointment over the property in Trust will not subject Trust or the property transferred from Trust to the trusts established pursuant to Articles 2.3, 2.4, 2.5, or 2.6 of Son’s will to the generation-skipping transfer tax.

LAW AND ANALYSIS

Ruling 1

Section 2033 of the Internal Revenue Code provides that a decedent's gross estate shall include the value of all property to the extent of the decedent's interest at the time of death.

Section 2041(a)(2) provides that the value of the gross estate shall include the value of all property to the extent of any property with respect to which the decedent has at the time of his death a general power of appointment created after October 21, 1942. For purposes of paragraph (2), the power of appointment shall be considered to exist on the date of the decedent's death even though the exercise of the power is subject to a precedent giving the notice or even though the exercise of the power takes effect only on the expiration of a stated period after its exercise, whether or not on or before the date of the decedent's death notice has been given or the power has been exercised.

Section 2041(a)(3) provides that the value of the gross estate includes the value of all property to the extent of any property with respect to which the decedent by will, or by disposition which is of such nature that if it were a transfer of property owned by the decedent such property would be includible in the decedent's gross estate under § 2035, 2036, or 2037, exercises a power of appointment created after October 21, 1942, by creating another power of appointment which under the applicable local law can be validly exercised so as to postpone the vesting of any estate or interest in such property, or suspend the absolute ownership or power of alienation of such property, for a period ascertainable without regard to the date of the creation of the first power. See § 20.2041-3(e)(1)(ii).

Section 2041(b)(1)(A) defines the term "general power of appointment" as a power that is exercisable in favor of the decedent, the decedent's estate, the decedent's creditors, or the creditors of the decedent's estate, except that a power to consume, invade, or appropriate property for the benefit of the decedent which is limited by an ascertainable standard relating to the health, education, support, or maintenance of the decedent is not deemed a general power of appointment.

Section 20.2041-1(b)(1) provides, in part, that the term "power of appointment" includes a beneficiary's power to appropriate or consume the principal of the trust.

Section 20.2041-1(b)(1) further provides, in part, that a donee may have a power of appointment if he has the power to remove or discharge a trustee and appoint himself. For example, if under the terms of the instrument, the trustee or his successor has the power to appoint the principal of the trust for the benefit of individuals including himself, and the decedent has the unrestricted power to remove or discharge the

trustee at any time and appoint any other person including himself, the decedent is considered as having a power of appointment.

Section 20.2041-1(c)(1) provides that a power of appointment is not a general power if by its terms it is either (a) exercisable only in favor of one or more designated persons or classes other than the decedent or his creditors, or the decedent's estate or the creditors of the holder's estate, or (b) expressly not exercisable in favor of the decedent or his creditors, or the decedent's estate, or the creditors of his estate.

In the present case, Son has a testamentary power to appoint Trust property to and among such persons and/or charitable organizations as he shall see fit. Trust expressly provides, however, that Son may not exercise this testamentary power of appointment in favor of himself, his creditors, his estate, or the creditors of his estate. Thus, we conclude that Son's testamentary power of appointment over Trust is not a general power of appointment under § 2041(a)(2), and possession of this power will not cause Trust to be included in Son's gross estate under § 2041(a)(2).

Further, Articles 2-3.8, 2-4.8, 2-5.3, and 2-6.3 grant the trust beneficiary of a successor trust a testamentary power to appoint his or her trust estate provided that, in no event, may the trust beneficiary of a successor trust appoint his or her trust estate in favor of his estate, his creditors, or the creditors of his estate. Accordingly, Son's proposed exercise of his power of appointment creates powers of appointment in the successor trusts over the property in Trust. However, under Articles 2-3.7, 2-4.7, 2-5.2, and 2-6.2 of Son's will, the trusts governed by those articles of Son's will shall terminate upon the first to occur of (i) the death of the trust beneficiary or (ii) the Year Trust Perpetuities Date. Under Article 4-3.5 of Son's will, by reference to Articles 4.1.13, no trust held under Articles 2-3, 2-4, 2-5, or 2-6 or pursuant to the exercise of a special power of appointment or any fiduciary power granted thereunder may be held in trust undistributed beyond the day preceding the expiration of twenty-one (21) years after the death of a class of persons all of whom were lives in being, or in gestation, at the date of the creation of Trust. These include the Year Trust Designated Class, all of whom were alive (or in gestation) on Date. Thus, Son's proposed exercise of his power of appointment over the property in Trust will not postpone or suspend the vesting, absolute ownership or power of alienation of any interest in the Trust property for a period, measured from Date, the date Trust was created, extending beyond any life in being at the date of creation of Trust plus a period of twenty-one (21) years, plus a reasonable period of gestation. Accordingly, we conclude that Son's exercise of his testamentary power of appointment will not cause Trust property to be included in his gross estate under § 2041(a)(3).

In the present case, Son has the power to remove a current or successor trustee, but he does not have the power to appoint a successor trustee of Trust. Pursuant to Trust, only Court has that power. Son may not participate in any way with the selection of a successor trustee. Son's power to remove the current or successor trustee alone is not the equivalent of the power referred to in § 20.2041-1(b)(1). See *also* Rev. Rul. 95-

58, 1995-2 C.B. 191. Therefore, Son's power of removal is not a "power of appointment" for purposes of § 20.2041-1(b)(1). Further, even though distributions to Son are not limited by an ascertainable standard and Son may appropriate or consume the principal of Trust, Son is an individual. Pursuant to Trust, Court may only appoint a national bank as successor trustee. Son represents that, from the viewpoint of voting control, Son does not own significant holdings of stock in any national bank; Son is not an executive of any national bank; and Son will not during his remaining lifetime purchase significant (from the viewpoint of voting control) holdings of stock in any national bank or become an executive of any national bank. Therefore, Son will not, at any time, have a significant interest in a national bank. Accordingly, Son will never possess the power, through the trustee, to distribute property of Trust to himself. Therefore, we conclude that Son's possession of the power to remove the trustee is not a general power of appointment for purposes of § 2041(b).

Accordingly, we rule that neither the express terms of Trust nor the exercise of Son's testamentary power of appointment will cause the value of the property in Trust to be includible in Son's gross estate for federal estate tax purposes.

Ruling 2

Section 2601 imposes a tax on every generation-skipping transfer (GST), which is defined under § 2611 as a taxable distribution, a taxable termination, and a direct skip.

Under § 1433(a) of the Tax Reform Act of 1986 (the Act) and § 26.2601-1(a) of the Generation-Skipping Transfer Tax Regulations, the generation-skipping transfer (GST) tax is generally applicable to generation-skipping transfers made after October 22, 1986. However, under § 1433(b)(2)(A) of the Act and § 26.2601-1(b)(1)(i), the tax does not apply to any generation-skipping transfer under a trust that was irrevocable on September 25, 1985, and no addition (actual or constructive) was made to the trust after that date. This rule does not apply to a transfer of property pursuant to the exercise, release, or lapse of a general power of appointment that is treated as a taxable transfer under chapter 11 or chapter 12. The transfer is made by the person holding the power at the time the exercise, release, or lapse of the power becomes effective, and is not considered a transfer under a trust that was irrevocable on September 25, 1985.

Section 26.2601-1(b)(1)(v)(A) provides that, except as provided under § 26.2601-1(b)(1)(v)(B), where any portion of a trust remains in the trust after the post-September 25, 1985, release, exercise, or lapse of a power of appointment over that portion of the trust, and the release, exercise, or lapse is treated to any extent as a taxable transfer under chapter 11 or chapter 12, the value of the entire portion of the trust subject to the power that was released, exercised, or lapsed is treated as if that portion had been withdrawn and immediately retransferred to the trust at the time of the release, exercise, or lapse. The creator of the power will be considered the transferor of

the addition except to the extent that the release, exercise, or lapse of the power is treated as a taxable transfer under chapter 11 or chapter 12.

Section 26.2601-1(b)(1)(v)(B) provides a special rule for certain powers of appointment. This section provides that the release, exercise, or lapse of a power of appointment (other than a general power of appointment as defined in § 2041(b)) is not treated as an addition to a trust if — (1) such power of appointment was created in an irrevocable trust that is not subject to chapter 13 under § 26.2601-(b)(1); and (2) in the case of an exercise, such power of appointment is not exercised in a manner that may postpone or suspend the vesting, absolute ownership or power of alienation of an interest in property for a period, measured from the date of creation of the trust, extending beyond any life in being at the date of creation of the trust plus a period of twenty-one (21) years plus, if necessary, a reasonable period of gestation.

In the present case, as concluded above, Son's power to appoint Trust property at his death is a limited power of appointment, not subject to tax under chapter 11 or 12. Accordingly, § 26.2601-1(b)(1)(v)(A) does not apply. Further, Son's power of appointment over the assets of Trust was created on Date in Trust, an irrevocable trust not subject to chapter 13 under § 26.2601-1(b). Therefore, the first requirement of § 26.2601-1(b)(1)(v)(B) is satisfied.

The second requirement of § 26.2601-1(b)(1)(v)(B), is also satisfied. Son's proposed exercise of his power of appointment over the property in Trust will create powers of appointment over the property in the successor trusts governed by Articles 2-3, 2-4, 2-5, and 2-6 of his will. Articles 2-3.8, 2-4.8, 2-5.3, and 2-6.3 grant the trust beneficiary of a successor trust a testamentary power to appoint his or her trust estate provided that, in no event, may the trust beneficiary of a successor trust appoint his or her trust estate in favor of his estate, his creditors, or the creditors of his estate. Under Article 4-3.5 of Son's will, by reference to Articles 4.1.13, no trust held under Articles 2-3, 2-4, 2-5, or 2-6 or pursuant to the exercise of a special power of appointment or any fiduciary power granted thereunder may be held in trust undistributed beyond the day preceding the expiration of twenty-one (21) years after the death of a class of persons all of whom were lives in being, or in gestation, at the date of the creation of Trust. These include the Year Trust Designated Class, all of whom were alive (or in gestation) on Date. Thus, Son's proposed exercise of his power of appointment over the property in Trust cannot be exercised in a manner that may postpone or suspend the vesting, absolute ownership or power of alienation of any interest in the Trust property for a period, measured from Date, the date Trust was created, extending beyond any life in being at the date of creation of Trust plus a period of twenty-one (21) years, plus a reasonable period of gestation.

Accordingly, based upon the facts submitted and representations made, we conclude that Son's proposed exercise of his testamentary power of appointment over the property in Trust will not subject Trust or the property transferred from Trust to the

separate trusts governed by the provisions of Articles 2-3, 2-4, 2-5, or 2.6 of Son's will to the GST tax.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

Sincerely,

Lorraine E. Gardner

Lorraine E. Gardner
Senior Counsel, Branch 4
Office of the Associate Chief Counsel
(Passthroughs & Special Industries)

Enclosures (2)

Copy of this letter
Copy for § 6110 purposes

cc: